



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 23, 2017

Ms. Dawn Roberts
Assistant City Attorney
City of Arlington
Mail Stop 04-0200
P. O. Box 1065
Arlington, Texas 76004-1065

OR2017-06014

Dear Ms. Roberts:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 649942 (Reference No. 33268).

The City of Arlington (the "city") received a request for any and all e-mails from a named employee to city employees for a specified period. We understand you will release some information to the requestor upon payment of the cost estimate. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note a portion of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-17904 (2016). In Open Records Letter No. 2016-17904 we ruled the city may withhold the submitted information under section 552.108(a)(1) of the Government Code.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, the city may continue to rely on Open Records Letter No. 2016-17904 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, to the extent the information in the current request is not encompassed by the prior ruling, we will consider your arguments against disclosure of this information.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention.² Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, Open Records Decision Nos. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state release of the submitted information would interfere with law enforcement or prosecution of crime. You argue the information at issue reveals certain tactics and procedures used by department officers that, if released, would put a potential suspect on notice of how and when a police officer would respond. You further argue release of the information at issue would allow suspects to circumvent law enforcement and avoid detection or prosecution. Based on your representations and our review, we agree the release

²Although you raise section 552.108(a)(1) of the Government Code, we understand you to raise section 552.108(b)(1) of the Government Code based on the substance of your arguments.

of the information at issue would interfere with law enforcement. Therefore, the city may withhold the information in its entirety under section 552.108(b)(1) of the Government Code.³

In summary, the city may continue to rely on Open Records Letter No. 2016-17904 as a previous determination and withhold the identical information in accordance with that ruling. The city may withhold the submitted information in its entirety under section 552.108(b)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/eb

Ref: ID# 649942

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.